U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 33376976

Date: SEP. 26, 2024

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (National Interest Waiver)

The Petitioner seeks second preference immigrant classification as a member of the professions holding an advanced degree or as an individual of exceptional ability, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Texas Service Center denied the petition, concluding the Petitioner had not established eligibility for the underlying immigrant classification and that a waiver of the required job offer, and thus of the labor certification, would be in the national interest. The Director dismissed a subsequent motion to reopen and reconsider as untimely. The matter is now before us on appeal. 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

As an initial matter, we note that our review on appeal is generally limited to the basis for the underlying adverse decision. Thus, we consider whether the Director properly dismissed the Petitioner's motion to reopen and reconsider as untimely.

Any motion must be filed within 30 days of the unfavorable decision (or 33 days if the decision is mailed). *Id.*; 8 C.F.R. § 103.8(b). U.S. Citizenship and Immigration Services (USCIS) may excuse failure to timely file a motion to reopen if the applicant demonstrates that the delay was reasonable and was beyond his or her control. 8 C.F.R. § 103.5(a)(1)(i). However, the regulations do not provide a corresponding discretion to excuse an untimely motion to reconsider.

The Director denied the petition on December 8, 2022, and the Petitioner filed her motion on June 13, 2023. Consequently, the Director dismissed the Petitioner's motion as untimely.

On appeal, the Petitioner does not allege USCIS error or provide evidence that her motion below was improperly dismissed. Rather, the Petitioner asserts that she is eligible for the underlying immigrant

classification and a national interest waiver. Therefore, the Petitioner has not addressed the reason for the dismissal of her motion. After de novo review, we agree with the Director's determination that the motion was untimely filed. Furthermore, as the Petitioner did not provide an explanation for the delay in filing the motion, she also did not establish that the delay was reasonable and that the late filing should be excused as a matter of discretion. Consequently, we will dismiss the appeal.

ORDER: The appeal is dismissed.